

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5181 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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R V RAIJADA & ORS.

Versus

STATE OF GUJARAT & ORS.  
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Appearance:

MR DM THAKKAR for Petitioners

MR VB GHARANIA for Respondent  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/12/96

ORAL JUDGMENT

Heard learned counsel for the parties.

2. The petitioners, in all 25 in number, filed this Special Civil Application and claim has been made that the action of the respondents not consider the petitioners for promotion to the cadre carrying a pay scale of Rs.425-700, be declared to be illegal, null and void.

3. The petitioners were originally appointed in the cadre of Surevyor/Clerk between the period 15th January 1951 to 1st August 1955, in the then State of Saurashtra. The petitioners have passed the sub service Departmental Examination and they were promoted to the post of Maintenance Surveyors. The petitioners have given out in the writ petition that the present pay scale of the post of Surveyor/Clerk and Maintenance Surveyor are Rs.290-489 and Rs.380-560 respectively. All the service conditions of the petitioners were to be governed by the Rules and Regulations framed by the State of Saurashtra from time to time. The petitioners have come up with the case that at the time of their appointment, the rules for appointment and promotion were not framed by the State of Saurashtra but the appointment and promotions were governed by the provisions of the Manual. Chapter 9 of the Manual deals with the rules for appointment, promotion etc. of the District Inspectors and members of the Land Records and staff subordinate to them. Under these Rules, the criteria for promotion to the higher grade was according to the seniority of the employee as shown in the gradation list of next lower post. These rules further provide for a condition on the employee who is selected for promotion to the higher post to pass the sub service Departmental Examination within a period of three years from the date of enlistment and confirmation on the promotional post would be subject to passing of the aforesaid examination.

4. In the year 1956, the then Raj Pramukh of the State of Saurashtra framed rules known as Saurashtra Civil Services (Classification and Recruitment) Rules 1956 in exercise of the powers conferred by proviso to Article 309 of the Constitution of India. The relevant provisions from those rules have been reproduced by the petitioners in para 2.3 of the petition and I shall make reference to the same at the relevant stage in the judgment. The post of Head Clerk and/or equivalent post having present pay scale of Rs.425-700 were included in appendix 'D' to the aforesaid Rules which provides that the post shall be filled in by promotion of clerks, surveyors, who have passed the sub service Departmental Examination and have put in at least four years of service. The State of Saurashtra had also framed Rules for examination of subordinate services of Land Records Department under its notification dated 1.6.54. Rule 2 of these Rules stipulates cadre of subordinate services of Land Records Department which included head Surveyors, Headquarter Assistant (Shirestedar and Head Clerks) carrying the pay scale of Rs.425-700. Rule 3 of the

Rules aforesaid provides that all the employees falling under the categories mentioned in sub rule 2 shall be required to pass the subordinate service departmental examination within a period of three years from the date of promulgation of those Rules. Rule 4 provides that all the Government employees in the subordinate services recruited after formation of the State of Saurashtra and candidates selected for appointment in subordinate services of land records shall be required to pass subordinate service departmental examination within three years from the date of issue of those rules or the date of enlistment, whichever is later. The petitioners' case is that they were governed by the aforesaid recruitment and examination rules and as they have passed the sub service departmental examination and have put more than four years of continuous service in the cadre of Clerk/Surveyor, they were eligible for promotion to the post of Head Surveyor/Headquarter Assistant/Head Clerk having pay scale of Rs.425-700. On reorganization of States, the State of Saurashtra was merged in the State of Bombay and the services of the petitioners were allotted to the State of Bombay. The grievance of the petitioners is that during the services under the State of Bombay, it was not open for the State of Bombay to vary the service conditions of the petitioners to their disadvantage without previous approval of the Central Government under the provisions of the State Reorganization Act, 1956. Thereafter on bifurcation of the State of Bombay into State of Gujarat and State of Maharashtra, the services of the petitioners were allocated to the State of Gujarat. The petitioners have come up with the case that even under the provision of Section 81(1) of the Bombay Reorganization Act, 1960, their service conditions were protected though change therein could have been there only with prior approval of the Central Government. In view of the amending provisions of the Bombay Reorganization Act, the right of the petitioners for being considered for promotion in the cadre carrying pay scale of Rs.425-700 on the strength of passing the sub service Departmental Examination and having put in more than four years' continuous service, remains unaltered. The trouble started when the respondent, the State of Gujarat on their allocation to this State, framed Rules for appointment to the post carrying pay scale of Rs.425-700 wherein the eligibility is laid down of passing LRQ examination. This rule was framed subsequent to reorganization of the Bombay State and made applicable to all the employees working in the Land Records Department of the State of Gujarat. The seniority list has been published by the respondent No.3 under its order dated 24th February 1984 of the

Surveyor/Clerks wherein the petitioners have been placed at Sr.Nos.31, 7, 11, 23, 27, 29, 34, 42, 57, 59, 61, 69, 78, 79, 94, 99, and 24 respectively. The petitioners were not considered for promotion to the post carrying pay scale of Rs.425-700 though the persons who were placed junior to them in the seniority list have been considered. This has been done only on the ground that the petitioners have not passed the LRQ examination. The petitioners' case is that they are entitled for exemption from passing of LRQ examination but that has also not been taken care of. The petitioners filed this Special Civil Application before this Court and prayed for direction to the respondent to consider their case for promotion.

5. The learned counsel for the petitioners contended that this Court has decided the matter in Special Civil Application filed by some of the allocated Government servants in which it has been held that they were entitled for exemption from the imposed condition of passing of LRQ examination, and accordingly the State of Gujarat issued a Circular dated 20th March 1970 under which all the departments were directed to review the rules of the departmental examination in so far as the Rules adversely effected the conditions of services of the allocated Government servants in their departments. They have further been advised either to revise the rules or to take appropriate action to get the approval of the Rules framed by the Central Government as required under Section 115 of the State Reorganization Act, 1956 or Section 81 of the Bombay Reorganization Act, 1960, and as such denial of the claim of petitioners for promotion is illegal, arbitrary and discriminatory.

6. Reply to this Special Civil Application has not been filed by the respondents. However, the learned counsel for the respondents made oral submissions. The learned counsel for the respondents has admitted the correctness of the Circular dated 30th March 1970. The learned counsel for the respondent also does not dispute that the respondents have not taken any prior approval of the Central Government to change the service conditions of the petitioners.

7. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

8. Having gone through the Government Circular dated 20th March 1970, I find sufficient merits in the contention of the learned counsel for the petitioners

that Rule regarding eligibility for promotion of the petitioners as it was there in the princely state of Saurashtra could not have been changed to their disadvantage without prior approval of the Central Government. That approval was not taken admittedly and as such, the Rule which has been framed by the respondent of imposing condition of passing LRQ examination for promotion to the post carrying pay scale of Rs.425-700 could not be given effect to in the case of petitioners. There is no dispute also that all the petitioners were allocated employees to this State under the provisions of both the Reorganization Acts. The matter has been considered by this Court in the case of similar situated persons in 1970s and it has been held that the service conditions of the allocated employees cannot be changed to their disadvantage without prior approval of the Central Government under the provisions of Section 115 of the State Reorganization Act, 1956 and Section 81 of the Bombay Reorganization Act, 1960. That decision has been accepted and Circular has been issued by the Respondent to give effect thereof. Though option was also open to the respondents to get approval of the Central Government for imposing the eligibility condition of passing LRQ examination for higher pay scale of Rs.425-700, but that option was not availed of and unless it is so sanctioned by the Central Government, the respondents were not justified to deny right of consideration to the petitioners for promotion to the post carrying pay scale of Rs.425-700. Admittedly this right has been denied to the petitioners in this Special Civil Application. The juniors were given promotion and the petitioners were superseded in promotion considering them to be ineligible for promotion. It is also an admitted fact that the condition of passing LRQ examination for being eligible for the pay scale of Rs.425-700 was imposed by the respondent after the petitioners' allocation to the State and which provision was not got approved by the Central Government. It is a case where the petitioners have been denied their right of consideration for promotion on wholly arbitrary and unreasonable ground. Not only that, this action of the respondents is contrary to the Circular dated 20th March 1970. The petitioners have the fundamental right of consideration of promotion which is conferred under Article 14 & 16 of the Constitution of India, which as stated earlier, has been admittedly denied to them.

9. In the result, this Special Civil Application is allowed and the respondent are directed to consider the cases of the petitioners for promotion to the post carrying the pay scale of Rs.425-700 at the relevant time

with effect from the date on which their juniors were promoted. This exercise has to be undertaken by the respondents within a period of six months from the date of receipt of certified copy of this order. In case the petitioners or some of the petitioners are found suitable for promotion from the date on which their juniors were promoted, they shall be entitled for all consequential benefits, i.e. fixation of pay on the promotional post, fixation of their pay in the revised pay scale, if any made, yearly grade increment in the higher pay scale as well as the revision of retirement benefits, as the petitioners' counsel stated that all the petitioners have retired by now. It is hereby clarified that the petitioners shall be entitled for notional benefits from the date of promotion of their juniors till the date of filing of this Special Civil Application in this Court, but they shall be entitled for actual benefits from the date of filing of this writ petition. In case the petitioners or some of the petitioner are not found suitable for promotion, it is expected of the respondent that they shall pass a reasoned order and a copy of the same may be sent to the petitioners or the petitioner who is not found suitable. Rule made absolute in aforesaid terms with no order as to costs.

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(sunil)